The Insurance Federation of Pennsylvania, Inc.

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ORIGINAL

Samuel R. Marshall
President & CEO

June 6, 2014

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Third Street, 2nd Floor
Harrisburg, PA 17120

Fed Ex

VIA ~~ELECTRONIC FILING~~

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JUN 06 2014
PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Re: Application of Lyft, Inc.;
A-2014-2415047 (Pennsylvania)

Dear Secretary Chiavetta:

Enclosed for filing is the Response of the Insurance Federation to the Preliminary Objections filed by Lyft, Inc. in the above-captioned matters.

Copies have been served on all parties as indicated in the attached Certificate of Service.

Sincerely,

Samuel R. Marshall

C: Administrative Law Judges Mary D. Long and Jeffrey Watson (via First-Class Mail)
Certificate of Service

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

In re: Application of Lfyt, Inc.	: Docket No. A-2014-2415045
	: Docket No. A-2014-2415047

RESPONSE OF THE INSURANCE FEDERATION OF PENNSYLVANIA TO THE PRELIMINARY OBJECTIONS FILED BY LYFT, INC.

The Insurance Federation of Pennsylvania, Inc. ("Insurance Federation"), pursuant to 52 Pa.Code Section 5.101, files this Response to the Preliminary Objections filed by Lyft, Inc. ("the Applicant") to the Insurance Federation's Protest of the above-captioned Application.

1. While the Applicant asserts the Insurance Federation's Protest should be dismissed "due to numerous failures to conform to the Commission's Regulations", it cites only one – a purported lack of standing. It cites Section 5.101(a)(2), although standing is covered separately in Section 5.101(a)(7).

2. The Applicant correctly sets forth the relevant filing dates.

3. No response.

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4. The Applicant argues the Commission should dismiss the Insurance Federation's Protest because the Federation "has no direct and immediate interest in this proceeding and therefore lacks standing to protest the Application." It suggests the Insurance Federation has merely "a general interest in compliance with the law [that] is insufficient to confer standing to protest an application."

   The Applicant ignores the unique liability exposure its Application creates for the auto-insuring members of the Insurance Federation, and it ignores the proposed means by which the Application purports to satisfy the insurance requirements the Commission has established for passenger carriers, including the drivers on the Applicant's Transportation Network Company platform.

   As stated in the Application, and in the Insurance Federation's Protest as the basis for its standing in this proceeding, the Applicant purports to satisfy the Commission's insurance requirements not so much by any insurance it will provide, but by insurance provided by, among others, auto-writing members of the Insurance Federation.

   - Section IV(A)(6) of Attachment A of the Application states that the Applicant will fulfill the Commission's insurance requirements by "requiring that any individual wishing to offer transportation as a

driver on the TNC platform provide proof of current personal liability insurance coverage in at least the amounts specified in 75 Pa.S.C. Section 1702 and 75 Pa.S.C. Section 1711." That insurance coverage is provided by the auto-insuring members of the Insurance Federation.

- That section of the Application goes on to state the Applicant will also provide an Excess Liability Policy to satisfy the Commission's insurance requirements "in the event that a driver's personal insurance does not respond or covers only a portion of the driver's liability associated with an accident". And it further states the Applicant will provide an Excess Uninsured and Underinsured Motorist Policy, again applying only when others' insurance does not satisfy any loss. Again, in both instances, the Applicant is relying on other insurers to fulfill its insurance requirements – and the Insurance Federation represents those other insurers.

As such, the Applicant has established the direct, immediate and substantial interest of the auto-insuring members of the Insurance Federation: The Applicant intends to provide only "excess" coverage – meaning coverage that applies only after coverage from other insurers, including the auto-insuring members of the Insurance Federation, has been sought and exhausted. So it is the auto-insuring members of the

Insurance Federation who the Applicant purports will provide the insurance the Commission requires. They are the ones who the Applicant touts will supposedly fulfill the Commission's insurance requirements. Nothing could be more direct, immediate and substantial.

In Paragraph 4(a-c), the Applicant contends "only entities with motor carrier authority in actual or potential conflict with authority sought by the applicant have standing to protest applications for new or expanded authority." That is an unduly restrictive interpretation of standing in these proceedings, and ignores the unique exposure this Application creates for the auto-insuring members of the Insurance Federation. It is that exposure – not a general one incidental, routine or expected in an insurer's standard coverage of its insureds – that gives the Insurance Federation, on behalf of its auto-insuring members, standing.

The Commission should not limit standing in this action to only certified motor carrier authorities. Instead, the correct standard is as set forth (albeit misapplied) by the Applicant: Standing is to be given to a party with a direct, immediate and substantial interest in this filing.

The Insurance Federation, which as a trade association has the standing of its members, fulfills each of those elements:

- The interests of the Insurance Federation's auto-insuring members *will be adversely impacted by the Applicant's proposed means of* fulfilling the Commission's insurance requirements: As the Applicant includes the insurance provided by the Federation's auto-insuring members, without their consent, to satisfy those insurance requirements, the Federation's members have direct and adverse exposure and therefore a direct interest.

- There is a close causal nexus between the Applicant's actions and the exposure they cause for the Insurance Federation's auto-insuring members: The moment the Applicant's drivers take to the road, they cause unanticipated liability exposure for the Insurance Federation's auto-insuring members, which is by definition an immediate interest.

- The liability exposure the Application creates for the Insurance *Federation's auto-insuring members is unique to them, not to any* other entities or to the general public, as it comes under their insurance policies. That makes the interests of the Federation's auto-insuring members unique and discernable from that of all citizens in seeking compliance with the law – thereby making the interests of the Federation's auto-insuring members substantial.

In Paragraph 4(d), the Applicant argues the Insurance Federation's interests and injuries are "predicated on contingencies and cannot rise beyond an indirect and general interest in compliance with established law," and attempts to separate the potential harm to the Insurance Federation's auto-insuring members from that of their policyholders, who it concedes "may be directly affected by the proposed service."

- The interests and injuries the Applicant creates for the Insurance Federation's auto-writing members are hardly contingent ones: The Applicant proposes the Insurance Federation's auto-writing members will be the primary insurers, whereas it will only offer "excess" coverage – any contingencies apply to it, not the Federation's members.

- An insurer covers and steps into the shoes of its policyholders, taking on liability and representation in legal proceedings. As such, all auto-writing members of the Insurance Federation are as "directly affected" as are their policyholders. And for the Insurance Federation's auto-writing members who are mutual insurance companies, their policyholders are also their owners.

Also in Paragraph 4(d), the Applicant correctly states the Insurance Federation's interest is "related solely to an interest in compliance with the

Commission's existing insurance requirements." The Applicant incorrectly concludes, however, that this is only indirect or nothing more than the interest of the general public: By its own Application, it has created and conceded the unique exposure and obligations it proposes for the auto-writing members of the Insurance Federation. It has thereby created a direct, immediate and substantial interest that establishes standing for the Insurance Federation on behalf of its auto-writing members that stands apart from the general public's interest of full compliance with the Commission's insurance requisites.

While it is encouraging that the Applicant "recognizes the importance of ensuring insurance coverage for the proposed experimental service," the Applicant fails to provide such coverage on its own, instead relying on coverage it believes will be provided by the Insurance Federation's auto-insuring members – which the Insurance Federation disagrees with, on behalf of those members.

In Paragraph 4(e), the Applicant cites the Commission's recent approval of the Application filed by Yellow Cab Company of Pittsburgh to support its contention that the Commission is well aware of its own insurance requirements, and that the Insurance Federation therefore lacks standing because its participation and Protest would not result in any public interest benefit.

The Yellow Cab Application's handling of the Commission's insurance requirements is instructive in its distinction from that proposed by the Applicant: Whereas Yellow Cab proposed to provide its own insurance coverage to fulfill the Commission's requirements, the Applicant attempts to do so in large measure through insurance provided by the Insurance Federation's auto-insuring members. It does so despite knowing the Insurance Federation's auto-insuring members disagree as to whether they provide any coverage – that is the issue of the livery exclusion emphasized in the Federation's Protest. The Insurance Federation is best qualified to raise this concern, and that is of considerable public benefit.

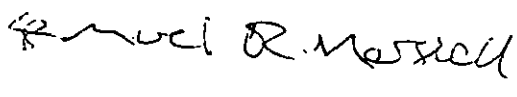
Also in Paragraph 4(e), and elsewhere in this paragraph, the Applicant contends the interest of the Insurance Federation is "speculative." That misunderstands the nature of insurance: An insurer's interest and exposure begin when someone counts on its coverage, which is well *before a claim under that coverage is brought. The only speculation here* is that of the Applicant: It is speculating that the auto-insuring members of the Insurance Federation will provide the coverage the Commission requires, despite knowing the exclusions in the policies of those auto insurers and despite the Protest filed by the Insurance Federation on their behalf.

In Paragraph 4(f), the Applicant concludes with the same assertions it makes throughout – that the Insurance Federation has failed to demonstrate standing by showing a direct, immediate or substantial interest in the subject matter of the Application. To the contrary, the Insurance Federation's Protest lays out its interest and therefore its standing. The Applicant has, too, claiming it can fulfill the Commission's insurance requirements not through its own coverage but through that of others despite their disagreeing to and excluding such coverage.

The Applicant could readily take away the Insurance Federation's standing by providing its own insurance rather than relying on the insurance of the Federation's auto-insuring members: No direct, unique and contested exposure would mean no direct, immediate and substantial interest for the Insurance Federation. Until that happens, the Applicant's objection to the standing it has created for the Insurance Federation rings hollow.

The Commission should dismiss the Applicant's Preliminary Objections.

Respectfully submitted,



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In Re: Application of Lyft, Inc. : Docket No. A-2014-2415047

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of § 1.54 (relating to service by a party).

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A-2014-2415047

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Samuel R. Marshall
Insurance Federation of Pennsylvania

Dated this 6th day of June, 2014, in Philadelphia, Pennsylvania

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